

SENATE BILL NO. 240

INTRODUCED BY C. KAUFMANN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE GENERAL STANDARDS OF CONDUCT FOR DIRECTORS AND OFFICERS OF CORPORATIONS; AND AMENDING SECTIONS 35-1-418 AND 35-1-443, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-1-418, MCA, is amended to read:

"35-1-418. General standards for directors. (1) A director shall discharge his the duties ~~as~~ of a director, including the ~~director's~~ duties as a member of a committee:

- (a) in good faith;
- (b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and
- (c) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging duties, a director may, in considering the best interests of the corporation, consider any of the following:

- (a) the interests of the corporation's shareholders, employees, customers, suppliers, and creditors;
- (b) the economy of the state and nation;
- (c) the impact of any action upon the communities in or near which the corporation's facilities or operations are located;
- (d) the long-term as well as the short-term interests of the corporation; and
- (e) any other factors relevant to promoting or preserving public or community interests.

(3) In discharging duties, a director shall consider the impact of any action upon the public health, public safety, and environment.

~~(2)~~(4) In discharging duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

1 (b) attorneys, public accountants, or other persons with regard to matters the director reasonably
2 believes are within the person's professional or expert competence; or

3 (c) a committee of the board of directors of which the director is not a member if the director reasonably
4 believes the committee merits confidence.

5 ~~(3)~~(5) A director is not acting in good faith if the director has knowledge concerning the matter in question
6 that makes reliance otherwise permitted by subsection ~~(2)~~ (4) unwarranted.

7 ~~(4)~~(6) A director is not liable for any action taken as a director or for any failure to take any action if ~~he~~
8 the director performed the duties of the director's office in compliance with this section."

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10 **Section 2.** Section 35-1-443, MCA, is amended to read:

11 **"35-1-443. Standards of conduct for officers.** (1) An officer with discretionary authority shall discharge
12 ~~his~~ the duties under that authority:

13 (a) in good faith;

14 (b) with the care an ordinarily prudent person in a similar position would exercise under similar
15 circumstances; and

16 (c) in a manner the officer reasonably believes to be in the best interests of the corporation.

17 (2) In discharging duties, an officer may, in considering the best interests of the corporation, consider any
18 of the following:

19 (a) the interests of the corporation's shareholders, employees, customers, suppliers, and creditors;

20 (b) the economy of the state and nation;

21 (c) the impact of any action upon the communities in or near which the corporation's facilities or
22 operations are located;

23 (d) the long-term as well as the short-term interests of the corporation; and

24 (e) any other factors relevant to promoting or preserving public or community interests.

25 (3) In discharging duties, an officer shall consider the impact of any action upon the public health, public
26 safety, and environment.

27 ~~(2)~~(4) In discharging his duties, an officer is entitled to rely on information, opinions, reports, or
28 statements, including financial statements and other financial data, if prepared or presented by:

29 (a) one or more officers or employees of the corporation whom the officer reasonably believes to be
30 reliable and competent in the matters presented; or

1 (b) attorneys, public accountants, or other persons as to matters the officer reasonably believes are
2 within the person's professional or expert competence.

3 ~~(3)~~(5) An officer is not acting in good faith if the officer has knowledge concerning the matter in question
4 that makes reliance otherwise permitted by subsection ~~(2)~~ (4) unwarranted.

5 ~~(4)~~(6) An officer is not liable for any action taken as an officer or for any failure to take any action if the
6 officer performed the duties of his office in compliance with this section."

7 - END -